

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2015-000095

01/09/2018

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

T. Cooley
Deputy

STATE OF ARIZONA DEPARTMENT OF
REVENUE

KENNETH J LOVE

v.

MESQUITE POWER L L C

BART WILHOIT

MINUTE ENTRY

The Court has the Arizona Department of Revenue's (ADOR), Motion for Partial Summary Judgment, filed on August 9, 2017, Mesquite Power, LLC's (Mesquite) response and Cross-Motion for Partial Summary Judgement, filed September 20, 2017, ADOR's reply and response, filed November 13, 2017 and Mesquite's reply, filed December 1, 2017. The Court benefited from oral argument on the motions on December 15, 2017.

This tax appeal involves ADOR's valuation of the Mesquite's electric generating facility. The electric generating facility at issue was operated by Sempra Energy Company ("Sempra") before ArcLight Capital Partners ("ArcLight") purchased all ownership, membership, and other interests in Mesquite in 2015.

Electric generating facilities are valued pursuant to A.R.S. § 42-14156. Two of the factors in determining the value of such a facility include the cost of real property improvements and personal property, both of which begin with a determination of the "cost" of the property. The term "cost" is defined in Section 42- 14156(A)(6) as follows:

(a) "Cost" means the cost of constructing the property or acquiring the property in an arm's length transaction.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2015-000095

01/09/2018

...
...

(d) In the case of a facility that is acquired from another taxpayer:

- (i) If, after the acquisition, the buyer has possession of the cost information, the valuation of the facility shall continue based on the seller's cost as if there were no change in ownership, except for land as provided in subsection A, paragraph 1.
- (ii) If, after the acquisition, the buyer does not possess the cost information, the acquisition cost in an arm's length transaction shall be used.

Mesquite has disclosed a five-page document that it identified as the "Mesquite Power Fixed Asset Listing." Mesquite acknowledges that the document was "generated by the former owner of the plant, Sempra Energy" and that the "document was produced with other documents obtained by ArcLight when it was conducting its due diligence relating to" the acquisition of the Subject Property.

The Mesquite Power Fixed Asset Listing itself is comprised of over 220 line items. Each line consists of an Asset ID; Asset ID Suffix; Asset Quantity; Cost Basis; LTD Depreciation Amount; Net Book Value; Acquisition Date; Acq. Year; Original Life Days; and Original Life Years. Many of the lines identified assets acquired in 2003, the year in which the entire plant was constructed by Sempra.

If the "Mesquite Power Fixed Asset Listing" is "cost information" as that term is used in A.R.S. §42- 14156(A)(6)(d), then subsection (i) applies. If not, then subsection (ii) applies. Both parties agree that the question of whether the "Mesquite Power Fixed Asset Listing" is "cost information" is one of law.

Mesquite contends that a question of fact exists regarding whether it "has possession of the cost information," as that phrase is used in A.R.S. § 42-14156(A)(6)(d)(i), but offers no competent evidence to support this position. It argues that some of the information in the "Mesquite Power Fixed Asset Listing" contradicts some of the construction cost information used by Sempra in its previous tax filings. If so, that contradiction would not disqualify the "Mesquite Power Fixed Asset Listing" from being "cost information." A.R.S. § 42-14156(A)(6)(d)(i) does not require that the "cost information" be uncontradicted by any other information. Nor does the statute require, or even allow, the Department to end its valuation

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2015-000095

01/09/2018

analysis by using that information which was acquired. Instead, if the purchaser of a facility acquires “cost information,” the department must then value the facility “based on the seller’s costs as if there were no change in ownership...” Therefore, under A.R.S. § 42-14156(A)(6)(d)(i), if the “cost information” acquired by the purchaser requires adjustment, the valuation would be adjusted.

Accordingly,

IT IS ORDERED that ADOR’s Motion for Partial Summary Judgment is granted. The Court finds that ADOR correctly utilized A.R.S. § 42-14156(A)(6)(d)(i) for calculating the cost factors subject to the statutory valuation formula.

IT IS FURTHER ORDERED that Mesquite’s Cross-Motion for Partial Summary Judgement is denied.